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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

BILAL ADOM, Plaintiff, **v.** **CDCR, et al. ,** Defendants.	4:22-cv-07150-JSW **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** Judge: The Honorable Jeffrey S. White Trial Date: None Set Action Filed: 11/15/2022

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TO PLAINTIFF BILAL ADOM, IN PRO SE:

PLEASE TAKE NOTICE that Defendants Mojica, Sawyer, Lotersztain, Montegrande, Atchley, and California Department of Corrections and Rehabilitation ("CDCR") hereby move this Court for summary judgment under Federal Rules of Civil Procedure 56. This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declarations of Mojica, Sawyer, Lotersztain, Montegrande, Atchley, and Miersma with accompanying exhibits, all pleadings, exhibits, and papers on file in this action, and any other matters properly before this Court. Pursuant to the Court's Order of Partial Dismissal and of Service [ECF 9], page 4, paragraph 4(d), no hearing will be held unless the Court so orders at a later date.

Defendants seek summary judgment in their favor on all of Plaintiff's remaining claims and causes of action including Plaintiff's Eighth Amendment claims for deliberate indifference against Defendants Mojica, Sawyer, Lotersztain, Montegrande, Atchley, and claim against CDCR for violating the Americans with Disabilities Act ("ADA") on the grounds that Plaintiff failed to exhaust his administrative remedies, and that the undisputed facts demonstrate Plaintiff cannot prove his claims for deliberate indifference or a violation of the ADA. Finally, Defendants Mojica, Sawyer, Lotersztain, Montegrande, Atchley also move on the ground that they are entitled to qualified immunity.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiff Bilal Adom is a state-prison inmate incarcerated at Salinas Valley State Prison ("SVSP"). Plaintiff brings this civil rights lawsuit against multiple Defendants alleging he was improperly denied access to incontinence supplies. Plaintiff's first cause of action alleges an Eighth Amendment claim for deliberate indifference against Defendants Mojica, Sawyer, Lotersztain, Montegrande, and Atchley. Plaintiff's second cause of action alleges violations of the ADA against Defendant CDCR. The Court should grant summary judgment because Plaintiff failed to exhaust his administrative remedies as to Defendants Mojica, Sawyer, Lotersztain, and Atchley. The Court should grant summary judgment on Plaintiff's claims for deliberate

indifference because the medical defendants, Doctors Montegrande and Lotersztain, conducted careful exams of Plaintiff and took proper medical action based on their exams. The non-medical Defendants, Defendants Mojica, Sawyer, and Atchley, are also entitled to summary judgment because they were not involved in Plaintiff's medical care and properly followed the advice of Plaintiff's doctors. The Court should grant summary judgment in favor of CDCR on Plaintiff's ADA claim because Plaintiff is now receiving incontinence supplies, and was not discriminated against because of his disability. Finally, Defendants Mojica, Sawyer, Lotersztain, Atchley, Montegrande, and Lotersztain are entitled to summary judgment on the ground of qualified immunity. All other claims and defendants have been dismissed by the Court with the exception of claims against Defendant Ladd who is not represented by the Attorney General's office. The Court should therefore grant summary judgment.

STATEMENT OF ISSUES

1. A lawsuit brought by a prison inmate who has failed to properly exhaust his administrative remedies must be dismissed. Plaintiff did not properly exhaust his administrative remedies against Mojica, Sawyer, Lotersztain, and Atchley. Should the Court dismiss Plaintiff's claims against Mojica, Sawyer, Lotersztain, and Atchley for failure to exhaust administrative remedies?

2. To prevail on an Eighth Amendment claim for deliberate indifference to health and safety, a plaintiff must show that the defendant subjectively knew of and intentionally ignored a substantial risk of serious harm. Plaintiff cannot demonstrate either that he experienced a serious harm, or that any Defendant was subjectively aware of and intentionally ignored a substantial risk of that harm. Are Defendants Mojica, Sawyer, Lotersztain, Montegrande, and Atchley entitled to summary judgment on Plaintiff's Eighth Amendment claims for deliberate indifference?

3. An inmate claiming a disability discrimination under the ADA must distinguish between an allegation of a mere failure to appropriately treat his disability and an allegation that he was effectively excluded from participation in some program, service, or activity because of his disability. Plaintiff alleges a failure to appropriately treat his disability, not that he was

excluded from something because of his disability. Is Defendant CDCR entitled to summary judgment on Plaintiff's claim that it violated the ADA?

4. Prison officials are entitled to qualified immunity unless their conduct violates clearly established constitutional rights. Plaintiff cannot show that Defendants Atchley, Sawyer, Lotersztain, Montegrande, and Mojica violated his clearly established constitutional rights. Are Defendants Atchley, Sawyer, and Mojica entitled to qualified immunity?

STATEMENT OF FACTS

Plaintiff is an inmate incarcerated at Salinas Valley State Prison ("SVSP"). (Compl., ECF 1, paragraph 4.) Plaintiff filed his verified Complaint on November 15, 2022. (Compl.) Plaintiff alleges he suffers from urinary incontinence and numerous other conditions. (*Id*. at paragraph 18.) Plaintiff alleges that in or around December 2020 he filed a Form 7362 medical request complaining about incontinence. (*Id*. at paragraph 19.) Plaintiff alleges that between December 2020 and early 2021 he received a 14 count weekly supply of diapers while housed on Alpha yard. (*Id*. at paragraph 20.) Plaintiff alleges that on May 18, 2021, Alpha yard's Primary Care Provider issued him a permanent order for incontinence supplies. (*Id*. at paragraph 22.) On August 16, 2021, Plaintiff's housing unit changed from Alpha yard to Delta yard and his incontinence supplies were discontinued. (*Id*. at paragraph 23; Decl. of Montegrande, paragraph 8.) Plaintiff received his last weekly incontinence supplies from Delta yard's medical staff on August 20, 2021. (Compl., paragraph 24.) Medical staff examined Plaintiff on October 1, 2021 and determined there was no corroborating data, information, or diagnosis found in Plaintiff's health record to indicate incontinence supplies were medically necessary. (Decl. of Sawyer, Exh. A, Institutional Level Response, and Exh. B, Institutional Level Response and Headquarters' Level Response; Decl. of Montegrande, paragraph 11; and Decl. of Mojica, Exh. A.)

On September 10, 2021, Plaintiff attended an off-site ophthalmology appointment with Dr. K. Rasheed. (Compl., paragraphs 27 and 29-30; Decl. of Montegrande, paragraph 2.) Upon return to SVSP, Plaintiff was seen by Dr. Montegrande, as is typical anytime an inmate visits an outside physician. (Decl. of Montegrande, paragraph 2.) Plaintiff Adom presented in a

wheelchair and refused to get on the exam table for the examination. (*Id*. at paragraph 3.) With Plaintiff's consent, Dr. Montegrande performed a standard extremity strength test and reflex test while he was seated in his wheelchair. (*Id*.) The strength test consists of gently pushing against the patient's extended arms and legs, one at a time, while asking the patient to resist the pressure as best as they are able. (*Id*.) The strength test does not involve any striking of the patient. (*Id*.)

Dr. Montegrande also performed a standard leg reflex exam by gently tapping Plaintiff's legs beneath the patella to measure his reflexes. (*Id*. at paragraph 4.) This test is performed with a small rubber reflex hammer. (*Id*.)

Dr. Montegrande did not perform a full body exam. (*Id*. at paragraph 5.) Dr. Montegrande did not examine Plaintiff for incontinence issues, or prescribe or discontinue any incontinence supplies, because he was only present for a follow-up after an off-site ophthalmology appointment. (*Id*.) Dr. Montegrande did not document the strength and reflex tests because only issues related to the outside ophthalmology appointment are required to be documented. (*Id*.) The September 10, 2021 exam was the only time Dr. Montegrande saw Plaintiff. (*Id*. at paragraph 10; Compl., paragraph 67.)

CNA B. Rubio was present during the examination. (Decl. of Montegrande, paragraph 6; Compl., paragraphs 27-29, 35.) Although Plaintiff alleges in his Complaint that he experienced pain during the exam and was injured by the exam, Plaintiff did not complain about any pain during the exam. (Decl. of Montegrande, paragraph 6; Compl., paragraphs 32-38.) Plaintiff's medical records show no evidence of any injury caused by Dr. Montegrande's examination and no evidence that Plaintiff sought any medical attention for any injuries he alleges were caused by the examination. (Decl. of Montegrande, paragraph 7.) Plaintiff filed a grievance against Dr. Montegrande on September 13, 2021. (Compl., paragraph 40, Exh. F; Decl. of Sawyer, Exh. A.)

Plaintiff alleges he was advised by a correctional officer on September 17, 2021, that his incontinence supplies had been discontinued. (Compl., paragraph 42.) On September 18, 2021, Plaintiff filed a Reasonable Accommodation Request, Form 1824, requesting he be provided with a weekly supply of diapers and access to laundry to exchange soiled linen. (Compl., paragraph 43, Exh. C; Decl. of Mojica, paragraph 6-7, Exh. A.) Plaintiff further requested that, if his

incontinence supplies are not provided, that he be provided with towels, trash can liners, medical tape, sanitation wipes, and access to linen exchange. (Compl., paragraph 43, Exh. C; Decl. of Mojica, paragraph 7, Exh. A.)

Mojica was the Associate Warden of SVSP in 2021, and was a member of the Reasonable Accommodation Panel ("RAP"). (Decl. of Mojica, paragraphs 1-2.) None of the other Defendants were members of the RAP. (*Id*. at paragraph 6, Exh. A.) One way that inmates with disabilities may request an accommodation is through the CDCR reasonable accommodations process by submitting a Reasonable Accommodation Request, CDCR Form 1824. (*Id*. at paragraph 3.) The request form asks the inmate to identify the access issue for which they are requesting an accommodation, explain why they are having the issue, and identify what accommodation they need. (*Id*.)

The RAP reviews and responds to inmate requests for accommodations. (*Id*. at paragraph 4.) The RAP considers evidence relevant to the inmate and their requested accommodation, which may include the inmate's medical records and prison file, opinions from subject-matter experts, and the inmate's accommodations request. (*Id*.)

To resolve requests for reasonable accommodations, the RAP may require healthcare services staff to verify an inmate's claimed medical disability or identify the inmate's associated limitation(s). (*Id*. at paragraph 5.) As such, the RAP often works with medical providers to determine whether a reasonable accommodation request is appropriate and not medically contra-indicated. (*Id*.)

The RAP reviewed Plaintiff's CDCR Form 1824 on September 29, 2021, and issued its Response, signed by Mojica, on October 14, 2021. (*Id*. at paragraph 6, Exh. A.) The RAP noted that Plaintiff was seen by medical staff on October 1, 2021, and there was no indication found for incontinence supplies. (*Id*. at paragraph 8, Exh. A.)

The RAP approved Plaintiff's request for accommodation with modifications. (*Id*. at paragraph 9, Exh. A.) The RAP set forth a process whereby Plaintiff could obtain a shower as soon as safety and security permits after an incontinence episode. (*Id*.) Any soiled clothing

would be processed according to biohazard and infections linen bag procedures as necessary. (*Id*.) Additional linen and clothing supplies may be required. (*Id*.)

Plaintiff alleges he sent a Request for Intervention letter to Defendants Atchley and Sawyer in or around mid-late September and early November 2021. (Compl., paragraph 44.) Plaintiff alleges he was interviewed by a 3rd Watch Program Sergeant regarding the letter sent to Atchley. (*Id*. at paragraph 45.) Plaintiff alleges the Sergeant told Plaintiff he was interviewing him in response to the letter he sent to the Warden. (*Id*.) The Sergeant said we do not have the ability to give him incontinence supplies because we are not medical. (Decl. of Miersma, paragraph 2, Exh. A, Depo. of Plaintiff, pages 67:25 to 70:23.) The Sergeant offered to help Plaintiff and Plaintiff said they were custody and could give him a chrono to get some supplies. (*Id*.) Plaintiff then asked for a week's supply of towels, some plastic and tape, and some sanitary provisions. (*Id*.) The Sergeant said he did not have those, but could and did give him three towels and three boxer shorts. (*Id*.)

Atchley was the Acting Warden at Salinas Valley State Prison from October 2019 to February 2022. (Decl. of Atchley, paragraph 1.) He does not recall receiving or reviewing any "Request for Intervention" letter in or around mid-late September and early November 2021 as alleged by Plaintiff. (*Id*. at paragraph 2.) He did not have any direct contact with Plaintiff Adom. (*Id*.)

The Warden's office receives approximately 10-20 letters per day from inmates. (*Id*. at paragraph 3.) The letters are reviewed by office staff who attach a routing sheet and forward as appropriate. (*Id*.) Letters are typically sent to the facility yard where they originated for further handing, but are sometimes referred to appeals because they are outside of the normal grievance handling process. (*Id*.)

Atchley is not a medical doctor and defers to medical staff on issues of whether an inmate should receive incontinence supplies. (*Id*. at paragraph 4.) Requests for incontinence supplies are distributed by floor custodial staff at the direction of medical staff. (*Id*.) Atchley made no changes, no alterations, and had no input on policies related to incontinence supplies while he was

Warden. (*Id*. at paragraph 5.) He only issued policies related to custody issues, not medical issues. (*Id*.)

On December 29, 2021, Plaintiff saw Dr. Lotersztain. (Compl., paragraph 49; Decl. of Lotersztain, paragraph 3.) She examined Plaintiff only this time and had no other direct involvement with his treatment. (Decl. of Lotersztain, paragraph 3.) Dr. Lotersztain is a Chief Physician for Telemedicine for CDCR working from Elk Grove, California. (*Id*. at paragraph 1.) She supervises nine telemedicine doctors. (*Id*.) While Dr. Lotersztain normally does not see patients on a regular basis, she sometimes helps out an institution by working the medical line for regular patient visits if there is a shortage of available physicians. (*Id*. at paragraph 2.) In 2021, during the week between Christmas and New Year's Day, she was visiting SVSP to help during the holidays because of staff shortages during the holiday week. (*Id*.)

Dr. Lotersztain saw Plaintiff as a covering Primary Care Provider to address urinary incontinence. (*Id*. at paragraph 4.) Plaintiff had a remote history of spinal surgery and stroke, but the urinary incontinence issue was only one year old and the cause was not clear. (*Id*.)

As a result, Dr. Lotersztain performed a prostate exam to check for an enlarged prostate after receiving Plaintiff's permission to do so. (*Id*. at paragraph 5.) The prostate exam took approximately 4-5 seconds. (Decl. of Miersma, paragraph 2, Exh. A, Depo. of Plaintiff, 59:16-22.) She explained to him that a blood test showed a normal PSA (prostate-specific antigen), so he probably did not have prostate cancer, but the rectal exam was to check for benign prostatic hypertrophy (BPH). (Decl. of Lotersztain, paragraph 5.) The exam showed a mildly enlarged and indurated prostate, so she prescribed Tamsulosin (Flomax). (*Id*. at 6.)

Even though Plaintiff's history of incontinence was vague, and he reported that he was able to urinate while awake and the incontinence happened in his dreams, Dr. Lotersztain ordered temporary incontinence supplies (good for three months) as a high priority (which is fourteen calendar days). (*Id*. at 7.) She also ordered a urine culture to rule out urinary infection. (*Id*.)

Dr. Lotersztain indicated Plaintiff was very pleasant during her examination and did not complain of any pain during the prostate exam. (*Id*. at 8.) The exam proceeded normally without any issues or abnormalities. (*Id*.) Certified Nursing Assistant Y. Botello was present behind a

privacy screen during the exam. (*Id.*) Approximately three weeks after Dr. Lotersztain's examination, Plaintiff began receiving his weekly incontinence supplies and continued to receive them at least through the date of his deposition on June 14, 2023. (Decl. of Miersma, paragraph 2, Exh. A, Depo. of Plaintiff, 61:11-63:23.)

Sawyer is currently a Chief Support Executive for Health Services at SVSP. (Decl. of Sawyer, paragraph 1.) From July 1, 2021 to August 1, 2022, she was the Acting Chief Executive Officer at SVSP. (*Id.* at paragraph 2.) She was responsible for reviewing health care grievances by inmates at the institutional level and approving decisions on grievances as recommended by health care staff. (*Id.*) If an inmate was dissatisfied with the decision at the institutional level, a process is in place to appeal the decision to the headquarters level. She is not involved with decisions at the headquarters level. (*Id.*)

Sawyer's role in reviewing health care grievances is supervisory only. (*Id.* at paragraph 3.) She is not a medical doctor and does not do any medical analysis. (*Id.*) She does not have any role in determining whether an inmate is medically eligible for any particular course of treatment. (*Id.*)

Sawyer did not receive or review any "Request for Intervention" letter in or around mid-late September and early November 2021 as alleged by Plaintiff. (*Id.* at paragraph 4.) She has not had any direct contact with Plaintiff. (*Id.*)

As Acting Chief Executive Officer of SVSP during the times relevant to this lawsuit and as a current Chief Support Executive for Health Services at SVSP, Sawyer is familiar with the health care grievance process at SVSP. (*Id.* at paragraph 5.)

As Acting Chief Executive Officer of SVSP, Sawyer reviewed Plaintiff's CDCR 602 HC (SVSP HC 21001578) as part of the Institutional Level Response. (*Id.* at paragraph 6.) Her signature is affixed to the Institutional Level Response dated November 18, 2021. (*Id.*) She also recognizes and can authenticate the signature of S. Gates or her designee dated February 9, 2022 affixed to the Headquarters' Level Response. (*Id.*) These records were received, reviewed, and created at or near the time of Plaintiff's grievance and subsequent appeals and are kept in the course of regularly conducted grievance investigation and appeals. (*Id.*)

As Acting Chief Executive Officer of SVSP, Sawyer reviewed Plaintiff's CDCR 602 HC (SVSP HC 21001617) as part of the Institutional Level Response. (*Id*. at paragraph 7.) Her signature is affixed to the Institutional Level Response dated November 30, 2021. (*Id*.) She also recognizes and can authenticate the signature of S. Gates or her designee dated March 8, 2022 affixed to the Headquarters' Level Response. (*Id*.) These records were received, reviewed, and created at or near the time of Plaintiff Adom's grievance and subsequent appeals and are kept in the course of regularly conducted grievance investigation and appeals. (*Id*.)

As Acting Chief Executive Officer of SVSP, Sawyer reviewed Plaintiff's CDCR 602 HC (SVSP HC 21001725) as part of the Institutional Level Response. (*Id*. at paragraph 8.) Her signature is affixed to the Institutional Level Response dated December 16, 2021. (*Id*.) She also recognizes and can authenticate the signature of S. Gates or her designee dated April 25, 2022 affixed to the Headquarters' Level Response. (*Id*.) These records were received, reviewed, and created at or near the time of Plaintiff Adom's grievance and subsequent appeals and are kept in the course of regularly conducted grievance investigation and appeals. (*Id*.)

Sawyer reviewed Plaintiff's Form 602 Grievance history and there are no other grievances related to the subject matter of his Complaint except for the three referenced above and attached to the Declaration of S. Sawyer as Exhibits A (SVSP HC 21001578), B (SVSP HC 21001617), and C (SVSP HC 21001725). (*Id*. at paragraph 9.) Portions of these grievances and appeals are also attached to Plaintiff's Complaint as Exhibits A, B, and F. (*Id*.)

STANDARD OF REVIEW

Summary judgment shall be granted where the pleadings, discovery, and affidavits show that there is no genuine dispute on any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), (c). Material facts are those that may affect the outcome. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). A dispute concerning a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.* at 249. Entry of summary judgment is mandated when the responding party "fails to make a showing sufficient to establish the existence of an element essential to that

party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). When the moving party has the burden of proof on an issue at trial, he or she must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. *Id.* at 322-23. On an issue for which the opposing party will have the burden of proof at trial, the moving party can prevail merely by noting the absence of evidence supporting the nonmoving party's case. *Id.* at 325. All reasonable inferences must be drawn in favor of the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

ARGUMENT

I. PLAINTIFF FAILED TO EXHAUST ADMINISTRATIVE REMEDIES FOR HIS CLAIMS AGAINST LOTERSZTAIN, MOJICA, SAWYER, AND ATCHLEY.

The PLRA states that, "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). This exhaustion requirement is mandatory and applies "to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002).

The PLRA requires "proper" exhaustion. *Griffin v. Arpaio*, 557 F.3d 1117, 1119 (9th Cir. 2009). Proper exhaustion under the PLRA requires that an inmate comply with applicable administrative guidelines and procedural rules. *Woodford v. Ngo*, 548 U.S. 81, 90 (2006). This means that prisoners must complete the administrative review process in accordance with the applicable procedural rules that are defined by the prison grievance process itself and not by the PLRA. *See Jones v. Bock*, 549 U.S. 199, 218 (2007); see also *Marella v. Terhune*, 568 F.3d 1024, 1027 (9th Cir. 2009) (the California prison system's requirements define the boundaries of proper exhaustion). For prison inmates in California, these procedural rules are codified in Title 15 of the California Code of Regulations.

In California, Title 15 of the California Code of Regulations permits an inmate to appeal "a policy, decision, action, condition, or omission by the Department or departmental staff that

causes some measurable harm to their health, safety, or welfare." Cal. Code Regs. tit. 15, § 3084.1(a). Health care grievances are governed by Title 15 of the California Code of Regulations at sections 3999.225 through 3999.237. *Robinson v. Cryer*, No. 20-cv-00980, 2023 U.S. Dist. LEXIS 68394, at 9 (E.D. Dist. Cal. April 19, 2023). To exhaust their administrative remedies, a prisoner is required to proceed through two levels of review, an institutional level and a headquarters level, unless otherwise excused. Cal. Code Regs. tit. 15, § 3999.226; *Robinson*, 2023 U.S. Dist. LEXIS 68394, at 9.

The grievance is initiated by filing a CDCR Form 602 which shall "describe the specific complaint that relates to their health care which they believe has a material adverse effect on their health or welfare" and "shall include any involved staff member's last name, first initial, title or position, and the date(s) and description of their involvement." Cal. Code Regs. tit. 15, § 3999.227(a) and (g)(1); *Robinson*, 2023 U.S. Dist. LEXIS 68394, at 9. "If the grievant does not have information to identify involved staff member(s), the grievant shall provide any other available information that may assist in processing the health care grievance." Cal. Code Regs. tit. 15, § 3999.227(g)(2); *Robinson*, 2023 U.S. Dist. LEXIS 68394, at 9-10. "The grievant shall document clearly and coherently all information known and available to him or her regarding the issue." Cal. Code Regs. tit. 15, § 3999.227(g); *Robinson*, 2023 U.S. Dist. LEXIS 68394, at 10. (Copies of unpublished cases have been mailed to Plaintiff per Local Rule 133(i)(3)(ii).)

A prisoner's failure to list all staff members involved in an incident or to fully describe the involvement of staff members does not necessarily preclude exhaustion of administrative remedies. *Robinson*, 2023 U.S. Dist. LEXIS 68394, at 16. (quoting *McClure v. Chen*, 246 F.Supp.3d 1286, 1291 (E.D. Cal. March 28, 2017) (citing *Reyes v. Smith*, 810 F.3d 654, 658 (9th Cir. 2016))). "However, 'there must be a 'sufficient connection' between the claim in the appeal and the unidentified defendants such that prison officials can be said to have had 'notice of the alleged deprivation' and an 'opportunity to resolve it.'" *Id*. at 16 (quoting *McClure v. Chen*, 246 F.Supp.3d 1286, 1291 (E.D. Cal. March 28, 2017) (quoting *Reyes v. Smith*, 810 F.3d 654, 659 (9th Cir. 2016))). Where a plaintiff makes no reference to any specific individuals, incidents, or administrative actions that violated his constitutional rights, and where the administrative

response to his grievance does not provide any indication that prison officials recognized the involvement of specific individuals, then the plaintiff cannot show a sufficient connection between the grievance and the unidentified defendants such that prison officials were put on notice as to the specific nature of the harm and those involved. *Robinson*, 2023 U.S. Dist. LEXIS 68394, at 17-19.

"A mere appeal to the next level of grievance review does not give notice that prison officials involved in lower levels of review are newly rolled-up into the substantive investigation of the grievance itself […]." *Gallardo v. Bourne*, No. 20-cv-09184, 2023 U.S. Dist. LEXIS 88091, at 30-31 (N.D. Dist. Cal. May 19, 2023). A plaintiff is required to initiate a separate grievance identifying each individual he alleges were deliberately indifferent for their role in deciding his other medical grievances. *Id*. at 31.

In the context of seeking summary judgment based on the failure to comply with the PLRA's exhaustion requirement, "the defendant's burden is to prove that there was an available remedy, and that the prisoner did not exhaust that available remedy." *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. June 27, 2013). When the defendant satisfies this initial burden, "the burden shifts to the prisoner to come forward with evidence showing that there is something in this case that made the existing and generally available administrative remedies effectively unavailable to him. *Id*. If the undisputed evidence construed in the light most favorable to the prisoner demonstrates a failure to exhaust administrative remedies, then summary judgment should be granted. *Id*. at 1166.

Administrative remedies are not exhausted as to any new issue, information, or person that was not included in the originally submitted CDCR form 602. Cal. Code Regs. tit. 15, § 3084.1(b) (2018). This means that new evidence cannot be submitted in the second or third levels of appeal. *Sapp v. Kimbrell*, 623 F.3d 813, 818, 825 (9th Cir. 2010) (raising an issue for the first time at the second level of appeal does not exhaust the issue); *Roberts v. Beard*, No. 15cv1044 WQH PCL, 2018 U.S. Dist. LEXIS 88520, at 27-28; 2018 WL 2407119 at *8 (S.D. Cal. May 25, 2018) (same).

Here, Plaintiff failed to identify any individual Defendants in his three inmate grievances (CDCR 602). Only his first grievance—SVSP HC 21001578—regarding his September 10, 2021 visit with his PCP, could reasonably be ascertained by CDCR to involve Dr. Montegrande because the response references the specific appointment with the PCP.

Plaintiff's second grievance—SVSP HC 21001617—generically references that as of September 16, 2021, he is being denied incontinence supplies. No specific individuals or events are identified. The Institutional Level Response and Headquarters' Level Response do not identify any of the Defendants nor is there any information that would provide a sufficient connection to any acts by the Defendants.

Plaintiff's third grievance—SVSP HC 21001725—does not reference any of the Defendants and was ultimately denied in the Headquarters' Level Response because it was a duplicate of SVSP HC 21001617 which had already been addressed and because Plaintiff was recorded as currently being provided with incontinence supplies.

Based on the review by Sawyer, these are the only grievances submitted by Plaintiff regarding the issues alleged in his Complaint. There are no others. None of the Defendants are expressly named by Plaintiff in his grievances, and while CDCR could infer that Dr. Montegrande was implicated in his first 602 because of the specific nature of the grievance and the date, none of the other Defendants can be determined by name or linked to Plaintiff's claim that he was denied incontinence supplies. Indeed, all three of Plaintiff's grievances were dated in September 2021, three months before he saw Dr. Lotersztain on December 29, 2021 which was her one and only contact with him. Moreover, as to Mojica, Sawyer, and Atchley, they were only some of many people indirectly involved through the appeals process. Accordingly, any grievance against them needed to be specifically stated. Thus, Defendants Lotersztain, Mojica, Sawyer, and Atchley should be dismissed because Plaintiff failed to exhaust his administrative remedies against them.

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II. PLAINTIFF CANNOT MEET HIS BURDEN OF PROVING THAT DEFENDANTS WERE DELIBERATELY INDIFFERENT TO HIS HEALTH AND SAFETY.

A prison official violates the Eighth Amendment when he or she is deliberately indifferent to an inmate's health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Deliberate indifference arises when the prison official knows that an inmate faces a substantial risk of serious harm and fails to take reasonable measures to abate it. *Id.* at 825. The prison official must subjectively know of and disregard an excessive risk to inmate health and safety. *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004). The deprivation or harm must be "unquestioned and serious" and contrary to "the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Deliberate indifference is a high standard and a showing of medical malpractice or negligence is insufficient to establish a constitutional deprivation under the Eighth Amendment. *Toguchi*, 391 F.3d at 1060. Further, a Plaintiff's difference of medical opinion regarding his treatment does not amount to a deliberate indifference to his serious medical needs. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989); *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996).

A. Montegrande was not deliberately indifferent.

Here, Plaintiff's incontinence supplies were discontinued on August 16, 2021, when he was transferred from Alpha yard to Delta yard. On October 1, 2021, medical staff determined that incontinence supplies were not medically necessary and developed a different plan for treatment of his incontinence which included a trial of oxybutynin for overactive bladder and urinary incontinence.

On September 10, 2021, Dr. Montegrande saw Plaintiff for the sole purpose of checking him back in from an outside eye appointment. This was not an appointment to evaluate Plaintiff's urinary incontinence and Dr. Montegrande did not discontinue Plaintiff's incontinence supplies. That had already been done earlier upon Plaintiff's transfer from Alpha yard to Delta yard. Dr. Montegrande's treatment of Plaintiff does not rise to the level of deliberate indifference of a serious medical need. It was not her role during that visit to evaluate Plaintiff for urinary incontinence and she did not discontinue his supplies. Plaintiff could and did immediately seek

reinstatement of his incontinence supplies, but medical staff determined on October 1, 2021, that they were not medically necessary and a different course of treatment was prescribed. Thus, Dr. Montegrande could not have been deliberately indifferent to Plaintiff by revoking his incontinence supplies because they were discontinued before he saw Dr. Montegrande.

Plaintiff also complains about the strength test and reflex test performed by Dr. Montegrande when he refused get on the exam table. Plaintiff's hyperbolic description of the test is simply not believable. The test was performed while Plaintiff was seated in his wheelchair and is a resistance test. The test does not involve Plaintiff being struck, but requires him to push back with his limbs against resistance provided by the doctor. Despite Plaintiff's descriptions of pain and injury, he did not complain during the exam, did not seek treatment for injuries caused by the exam, and there is no evidence he was injured during the exam. Dr. Montegrande's strength test and reflex test also does not rise to the level of deliberate indifference. These are standard medical tests and perfectly reasonable when Plaintiff refused to get out of his wheelchair for his exam. Plaintiff consented to the tests and there is no objective evidence that he suffered any pain or injury.

B. Mojica was not deliberately indifferent.

Within days after seeing Dr. Montegrande, Plaintiff filed his first grievance immediately followed by his Reasonable Accommodation Request. Mojica serves on the RAP, but is not a medical doctor and here deferred to medical staff on issues like incontinence supplies. The RAP also noted that Plaintiff had been seen on October 1, 2021, by medical staff who did not find incontinence supplies to be medically necessary. The RAP did however approve Plaintiff's request with modifications, providing accommodations in the form of the RAP set forth a process whereby Plaintiff could obtain a shower as soon as safety and security permits after an incontinence episode. Any soiled clothing would be processed according to biohazard or infections linen bag procedures as necessary. Additional linen and/or clothing supplies may be required.

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The RAP, and specifically Mojica, were not medically indifferent to Plaintiff's serious medical condition. Instead, the RAP deferred to Plaintiff's PCP who did not believe incontinence supplies were medically necessary and had instituted a different course of treatment. Even so, the RAP authorized specific accommodations for Plaintiff in the form of additional showers, handling of soiled clothing, and provision of additional linens and clothes. Mojica had no direct contact with Plaintiff but as the ADA Coordinator was responsible to see that Plaintiff's request was reviewed by the RAP. He performed his role. Plaintiff may have not agreed with the treatment, accommodations, or RAP decision, but a difference of opinion between the physician and a plaintiff-inmate does not amount to deliberate indifference. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989); *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996). Here, Mojica did not ignore Plaintiff's condition, but instead reasonably relied on medical staff's opinion and provided alternative accommodations. Accordingly, Mojica was not deliberately indifferent to Plaintiff's serious medical needs.

C. Atchley was not deliberately indifferent.

As Warden, Atchley had no direct contact with Plaintiff, is not a medical doctor, and does not recall receiving any letters from Plaintiff. Plaintiff alleges he was seen by a Sergeant in response to his letter to the Warden, which is consistent with the process in place at the Warden's office to handle the 10-20 letters received per day. The Warden ensured that the letters were routed to the appropriate yard, and responded to by staff who would be aware of the situation. Accordingly, Warden Atchley was only involved in his capacity as a supervisor. There is no respondeat superior liability under § 1983. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *see also Strong v. Woodford*, 428 F. Supp. 2d 1082, 1086 (C.D. Cal. 2006) (a supervisor is generally not liable under § 1983 for the acts of a subordinate). Liability arises only upon a showing of personal participation by the supervisor. *Taylor*, 880 F.2d at 1045. "A supervisor is only liable for constitutional violations of his subordinates if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them." *Id*. Warden Atchley cannot be liable for the alleged wrongs of those under his supervision.

Even if he could, custody staff was not deliberately indifferent. The Sergeant on Plaintiff's yard advised him that he was not part of the medical staff and could not provide him with incontinence supplies. Instead, he did what he could at the moment and provided him with additional towels and boxer shorts. Accordingly, Atchley nor his custody staff were deliberately indifferent to Plaintiff serious medical needs.

D. Dr. Lotersztain was not deliberately indifferent.

Dr. Lotersztain was filling in for the holidays when she saw Plaintiff to evaluate him for urinary incontinence. Given that Plaintiff's history of spinal surgery and stroke were remote, and the incontinence issue was recent, within one year, the cause of Plaintiff's incontinence was not clear. Plaintiff's prior blood test showed that he probably did not have prostate cancer, but it did not rule out other prostate issues, like benign prostatic hypertrophy (an enlarged prostate). With Plaintiff's consent, Dr. Lotersztain performed a routine prostate exam that lasted approximately 4-5 seconds according to Plaintiff. The test showed mild enlargement and Dr. Lotersztain prescribed Flomax for treatment.

In addition, even though Plaintiff's history of incontinence was vague, and he reported that he was able to urinate while awake and the incontinence happened in his dreams, Dr. Lotersztain ordered temporary incontinence supplies (good for three months) as a high priority (which is fourteen calendar days). She also ordered a urine culture to rule out urinary infection. Approximately three weeks after Dr. Lotersztain's examination, Plaintiff began receiving his weekly incontinence supplies and continued to receive them at least through the date of his deposition on June 14, 2023.

Dr. Lotersztain was not deliberately indifferent to Plaintiff's serious medical need. Indeed, she reviewed his file, conducted an examination, ordered tests, and otherwise took multiple efforts to determine the cause and, even when not clearly indicated, still ordered him what he wanted, which was the incontinence supplies to be provided on an expedited basis. The five second routine prostate exam, performed with Plaintiff's consent, and without any expression of pain to medical staff during the exam, was medically necessary to determine the cause of

Plaintiff's incontinence. There is no evidence Dr. Lotersztain ignored Plaintiff's serious medical needs—in fact, the evidence proves the opposite. Dr. Lotersztain cannot be said to be deliberately indifferent to Plaintiff's serious medical needs.

E. Sawyer was not deliberately indifferent.

Sawyer is not a medical doctor and her role was to evaluate inmate health care grievance appeals at the institutional level. She signs off on recommendations as provided by medical staff. Sawyer did not have any direct involvement with Plaintiff and does not recall receiving any letter from him.

Plaintiff submitted three grievances related to incontinence supplies within three weeks during September 2021. Each one was denied as the medical staff had determined that incontinence supplies were not medically necessary and other courses of treatment were being provided. Moreover, by the time the first grievance, filed September 13, 2021, received a Headquarters' Level Response February 9, 2022, Plaintiff had an active order for incontinence supplies that continued uninterrupted at least until the time of his deposition in this matter on June 14, 2023. The Headquarters' Level Responses to his second and third grievances were issued on March 8, 2022 and April 25, 2022, and they also noted that Plaintiff had an ongoing order for incontinence supplies.

Sawyer, in her supervisory role signing off on the Institutional Level Responses based on recommendations from medical staff, cannot be said to be deliberately indifferent to Plaintiff's serious medical needs. Plaintiff's incontinence supplies were discontinued when he transferred from Alpha yard to Delta yard and subsequent medical evaluations determined that incontinence supplies were not merited and that other treatments were required. Despite this, Plaintiff fixated on obtaining incontinence supplies when there was no medical diagnosis recommending them. Defendants were not deliberately indifferent to Plaintiff, rather Plaintiff just disagreed with the courses of treatment. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989); *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996). Disagreements over medical treatment are insufficient to support an Eighth Amendment deliberate indifference claim.

III. PLAINTIFF FAILS TO MEET HIS BURDEN TO SHOW THAT CDCR DISCRIMINATED AGAINST HIM BECAUSE OF HIS DISABILITY.

To state a claim under Title II of the ADA, a plaintiff must allege: (1) he is an individual with a disability; (2) he is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities; (3) he was either excluded from participation in or denied the benefits of the public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits, or discrimination was by reason of his disability. *O'Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1060 (9th Cir. 2007), quoting *McGary v. City of Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004).[1]

In the prison context, a plaintiff must show that the alleged discrimination was because of plaintiff's disabilities. *Hilson v. Arnett*, No. 1:15-cv-01240-MJS (PC), 2017 U.S. Dist. LEXIS 202540, at *26-27 (E.D. Cal. Dec. 8, 2017). [A] prisoner bringing a claim of disability discrimination under Title II of the ADA must distinguish between an allegation of a mere failure to appropriately treat his disability—which fails to state a claim—and an allegation that he was effectively excluded from participation in some program, service, or activity of the public entity 'because of' his disability—which may state a claim. *Teters v. Washington*, No. 3:18-cv-05481-RBL-JRC, 2019 U.S. Dist. LEXIS 75157, at *12-13 (W.D. Wash. Apr. 10, 2019).

Here, Plaintiff alleges that his disability is urinary incontinence and that he is excluded from obtaining incontinence supplies because of this disability. However, what Plaintiff is really alleging is that he is dissatisfied with the medical decisions regarding the treatment that was recommended related to his disability (i.e., needing incontinence supplies). Plaintiff was not excluded from incontinence supplies because he was incontinent, but rather he was denied incontinence supplies because a medical provider determined that they were not medically necessary. Also, the evidence shows that Plaintiff received other treatment for his condition, including Flomax. Because this is a matter of a disagreement about treatment and not exclusion for programs, services, and activities because of a disability, Plaintiff cannot recover under the

[1] The ADA and the RA are decided under the same standard. *Duval v. County of Kitsap*, 260 F.3d 1124, 1135-36 (9th Cir. 2001).

ADA. Accordingly, the Court should therefore grant CDCR summary judgment on Plaintiff's ADA claim.

Furthermore, Plaintiff cannot show he is entitled to either damages or injunctive relief under the ADA. Plaintiff requests injunctive relief in the form of a permanent order of incontinence supplies as opposed to a temporary order for incontinence supplies. (Compl., paragraph 85.) Here, the evidence demonstrates that Plaintiff received incontinence supplies beginning in January 2022, nearly a full year before filing his Complaint on November 15, 2022. He continued to receive uninterrupted incontinence supplies at least through the date of his deposition on June 14, 2023. Claims for non-monetary relief are moot if the prisoner-plaintiff is no longer subject to the alleged illegal conduct. *Wiggins v. Rushen*, 760 F.2d 1009, 1010-11 (9th Cir. 1985) ("In these circumstances, where the complainant was no longer subject to the allegedly illegal activity, the complaint for an injunction became moot."); *Jonquil Thomas-Weisner v. Gipson*, No. 19-cv-01999-JAH-BGS, 2022 U.S. Dist. LEXIS 106395, at 18 (S.D. Cal. June 14, 2022).

There is an exception to the mootness doctrine if the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and there is a reasonable expectation that the same complaining party will be subjected to the same action again. *Wiggins*, 760 F.2d at 1110. However, Plaintiff has had uninterrupted access to incontinence supplies for nearly two years, and nearly a year before filing his Complaint. Plaintiff's claims under the ADA are therefore moot. Plaintiff is not entitled to injunctive relief.

Plaintiff is also not entitled to monetary damages. To recover monetary damages, Plaintiff must prove intentional discrimination by Defendants and the standard for intentional discrimination is deliberate indifference. (*Duvall v. County of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001); *Ferguson v. City of Phoenix*, 157 F.3d 668, 674 (9th Cir. 1998); *Harris v. Lake Cty. Jail*, No. C 09-3168 SI (pr), 2010 U.S. Dist. LEXIS 39441, at *9 (N.D. Cal. Apr. 1, 2010).

The RAP investigated Plaintiff's Reasonable Accommodation Request and verified the specific accommodations he was requesting, reviewed his medical records, and consulted with appropriate experts. The RAP noted that medical staff had determined on October 1, 2021 that

there was no indication found for incontinence supplies. The RAP made accommodations for Plaintiff by allowing him access to showers following any incontinence issues, as well as handling of soiled clothing and provision of extra linens and clothes if necessary. Plaintiff cannot prove deliberate indifference, and therefore cannot show any discriminatory intent. Plaintiff therefore cannot recover damages under the ADA.

CDCR did not violate the ADA. CDCR provided both medical treatment and reasonable accommodations for Plaintiff's urinary incontinence, but Plaintiff disagreed with that treatment and accommodation and insisted on incontinence supplies. Under the ADA, an allegation that CDCR failed to appropriately treat his disability is not a valid claim. *Teters*, 2019 U.S. Dist. LEXIS at *12-13. Ultimately, Plaintiff also received incontinence supplies in a steady and uninterrupted supply from January 2022 until at least June 2023. Plaintiff is not entitled to either injunctive relief or monetary damages under the ADA because CDCR was not deliberately indifferent to his serious medical need and his claim for injunctive relief is now moot.

IV. MONTEGRANDE, LOTERSZTAIN, ATCHLEY, SAWYER, AND MOJICA ARE ENTITLED TO QUALIFIED IMMUNITY.

Montegrande, Lotersztain, Mojica, Sawyer, and Atchley are entitled to qualified immunity in this case. Qualified immunity protects government officials from personal liability for civil damages unless their conduct violates clearly established constitutional rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). If the plaintiff fails to show that the defendant's conduct violated a constitutional right, qualified immunity applies. *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009).

Montegrande and Lotersztain provided necessary and reasonable medical care to Plaintiff. The fact that Plaintiff disagreed with the care is not a basis for liability under existing law. *Toguchi. v. Chung*, 391 F.3d 1051, 1059-61 (9th Cir. 2004).

Similarly, Plaintiff cannot show that Atchley, Sawyer, and Mojica violated his constitutional rights. None of these Defendants had direct interaction with Plaintiff and each

became indirectly involved solely because of their supervisory roles. Each of them performed their job and relied upon medical staff's evaluation of Plaintiff's medical claims.

Atchley, as Warden, receives 10-20 letters a day from inmates and they are reviewed by his staff and forwarded as appropriate. Here, Plaintiff alleges he was interviewed by a Sergeant because of his letter to the Warden and while the Sergeant could not provide the incontinent supplies he wanted, he did provide him with some additional towels and boxers. Atchley is entitled to qualified immunity.

Mojica, in his supervisory role of ADA Coordinator, ensured that Plaintiff's Reasonable Accommodation Request was processed appropriately and reviewed by the RAP. Mojica signed off on the final recommendation based on recommendations from medical staff and the RAP provided Plaintiff accommodations. Mojica is entitled to qualified immunity.

Sawyer, in her supervisory role as Acting Chief Executive Officer, was responsible for reviewing institutional level health care grievances and signing off on the appeals decisions based on recommendations from medical staff. Sawyer is entitled to qualified immunity.

Montegrande, Lotersztain, Atchley, Mojica, and Sawyer did not violate Plaintiff's clearly established constitutional rights. These Defendants are entitled to qualified immunity.

CONCLUSION

Plaintiff did not exhaust his administrative remedies against Lotersztain, Atchley, Mojica and Sawyer. Plaintiff's grievances do not mention any of them by name. Lotersztain did not perform her sole exam of Plaintiff until after Plaintiff filed all of his grievances. Thus, Plaintiff has failed to exhaust his administrative remedies as to these Defendants. Defendants request an *Albino* hearing if the Court finds any disputes of material fact with respect to Plaintiff's failure to exhaust his administrative remedies.

Defendants were not deliberately indifferent to Plaintiff's serious medical needs. Dr. Montegrande only saw Plaintiff once upon his return from an outside eye appointment and was not scheduled to address any claims of urinary incontinence. Her exam, with Plaintiff's consent, included a standard strength test and reflex test when Plaintiff refused to get on the exam table

and there is no objective evidence Plaintiff sought treatment for alleged injuries, was actually injured, or experienced any pain. Dr. Montegrande did not discontinue Plaintiff's incontinence supplies. Dr. Montegrande was not deliberately indifferent to Plaintiff's serious medical needs.

Dr. Lotersztain also only saw Plaintiff once, and tried to determine the cause of his incontinence by performing, with his consent, a standard prostate exam. She prescribed Flomax and issued a high priority order for incontinence supplies which Plaintiff has received uninterrupted from then until at least June 14, 2023. Dr. Lotersztain was not deliberately indifferent to Plaintiff's serious medical needs.

Defendants Atchley, Sawyer, and Mojica each had only indirect involvement with Plaintiff by virtue of their supervisory roles. None of them are medical doctors and all of them deferred to medical staff on issues of incontinence supplies. They were not deliberately indifferent to Plaintiff's serious medical needs. Moreover, all Defendants are afforded qualified immunity because they did not violate any of Plaintiff's clearly established constitutional rights.

Finally, CDCR did not violate the ADA. Plaintiff received treatments and reasonable accommodations for his urinary incontinence, but Plaintiff disagreed with those decisions and instead sought incontinence supplies which were not medically recommended. Ultimately, Plaintiff did receive the incontinence supplies and any claim for injunctive relief is moot.

For all the foregoing reasons, Defendants respectfully request this Court grant Defendants' Motion for Summary Judgment and dismiss Plaintiff's Complaint with prejudice.

Dated: September 27, 2023

Respectfully submitted,

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/s/ Eric Miersma
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CERTIFICATE OF SERVICE

Case Name: **Bilal Adom v. CDCR, et al.** No. **4:22-cv-07150-JSW**

I hereby certify that on September 27, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

DECLARATION OF M. ATCHLEY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMARRY JUDGMENT

DECLARATION OF S, SAWYER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMARRY JUDGMENT

DECLARATION OF R. MOJICA IN SUPPORT OF DEFENDANTS' MOTION FOR SUMARRY JUDGMENT

DECLARATION OF M. LOTERSZTAIN, M.D. IN SUPPORT OF DEFENDANTS' MOTION FOR SUMARRY JUDGMENT

DECLARATION OF F. MONTEGRANDE, M.D. IN SUPPORT OF DEFENDANTS' MOTION FOR SUMARRY JUDGMENT

DECLARATION OF E. MIERSMA IN SUPPORT OF DEFENDANTS' MOTION FOR SUMARRY JUDGMENT

DEFENDANTS' *RAND* WARNING TO PLAINTIFF REGARDING OPPOSING SUMMARY JUDGMENT

[PROPOSED] ORDER RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On September 27, 2023, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

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In Pro Se

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 27, 2023, at Los Angeles, California.

J. Sissov	*/s/ J. Sissov*
Declarant	Signature

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